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EX PARTE OR LATE FILED
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EX PARTE

RECEIVED

AUG 23 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

August 23, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket No. 96-115, Telecommunications Carriers' Use of Customer
Proprietary Network Information and Other Customer Information
CC Docket No. 96-98, Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996
CC Docket No. 99-273, Provision of Directory Listing Information Under the
Telecommunications Act of 1934, as Amended

Dear Ms. Roman Salas:

This letter is being filed after being contacted by Robin Smolen of the Common Carrier Bureau regarding Qwest Corporation's¹ ("Qwest") interest in filing supplemental remarks, in light of the volume of post-formal comment *ex partes* that have been filed in the above-referenced proceedings. For the most part, these *ex partes* have been pressed by independent directory assistance ("DA") providers making two arguments:

- First, such providers argue that they are entitled to DA listings directly from local exchange carriers ("LEC"), despite the express language of Section 251(b) of the Act restricting the legislative mandate regarding the provision of such information to telephone toll and telephone exchange providers.
- Second, the independent DA providers argue that the rates being charged to exchange and toll providers and their agents (the independent DA providers) are excessive or unjust and unreasonable.

¹ On June 30, 2000, U S WEST, Inc., the parent and sole shareholder of U S WEST Communications, Inc., merged with and into Qwest Communications International Inc. Further, on July 6, 2000, U S WEST Communications, Inc. ("U S WEST") was renamed Qwest Corporation.

Qwest has already commented on the “law” of Section 251(b) regarding the mandated provision of DA listings to independent DA providers.² The “law” of the case is clear: LECs are not obligated to make DA listings available to independent DA providers (who operate essentially as information service providers), absent a *bona fide* “agency” relationship with a provider of either toll or exchange service. However, as Qwest has indicated, carriers remain free to make a business determination to provide broader access to such DA listings directly -- and Qwest has made the business decision to do so.

Qwest has also communicated our position on the arguments of independent DA providers that the prices associated with DA list information are excessive.³ The prices associated with the provision of DA listings are not prescribed by the Telecommunications Act of 1996. Rather, the prices/rates for such listings need only be just and reasonable. **And, it is the obligation of those objecting to those rates to prove they are unjust and unreasonable**, not merely to make assertions that the rates are too high.

As Qwest advised at least one of these independent DA providers, the rates they often quote in their correspondence (and their advocacy as well) are the old Total Element Long-Run Incremental Cost (“TELRIC”) rates that were being charged competitive local exchange carriers (“CLEC”) prior to the time that the Federal Communications Commission (“Commission”) determined that DA services and listings were not required to be provided as Unbundled Network Elements (“UNE”) and before the entire matter of TELRIC pricing came under question based on appellate jurisprudence.⁴

Pricing for DA listings, as long as it is just and reasonable, is not subject to attack because it does not meet a TELRIC standard or because the price charged an independent DA provider is more than a CLEC (due to historical state decision-making regarding the provision of such information to CLECs) or because pricing follows a licensing methodology to secure higher prices for multiple uses. If an independent DA provider wants to make an “unjust and unreasonable” case under Section 201(b) of the Communications Act, they should be required to do more than meet with the Commission or file *ex parte* letters claiming to have “proved” their case.⁵ The price independent DA providers pay to “list brokers” is simply immaterial without a more substantial case to support the factual allegation that the amounts they pay carriers providing DA list information violate the Communications Act.

² See *Ex Parte* letter from Kathryn Marie Krause, U S WEST, to Magalie Roman Salas, Secretary, FCC, dated Mar. 2, 2000 (referencing Comments of U S WEST, CC Docket No. 99-273, filed Oct. 13, 1999 at 4-6; Reply Comments of U S WEST, CC Docket No. 99-273, filed Oct. 28, 1999 at 13-15 (“U S WEST Reply Comments”).

³ See letter from John A. Kelley, U S WEST, to Gilbert E. Mauk, Excell Agent Services, L.L.C., dated Oct. 22, 1999 (“Kelley Letter”), attached hereto as Exhibit A. And see U S WEST Reply Comments at 13-15.

⁴ See *Ex Parte* letter from Gerard J. Waldron, Covington & Burling, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-115, et al., filed July 26, 2000 at 4 (“InfoNXX *Ex Parte*”) (“InfoNXX’s experience as a CLEC in New York”). And see Kelley Letter at 1-2. Of course, the use of TELRIC at all as the basis for UNE pricing is currently the matter of litigation, with the current situation indicating that TELRIC as currently configured is an unlawful application of the requirements of the Telecommunications Act. See Iowa Utilities Board, et al. v. Federal Communications Commission, No. 96-3321 (2000 U.S. App. 17234, July 18, 2000).

⁵ See *InfoNXX Ex Parte* at 1-2.

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LECs are not required to format their license agreements to match those of others. Nor are LECs obligated to provide information calculated to be used for multiple purposes at license rates designed to apply to single uses. Independent DA providers seek to avoid the deregulatory thrust of the Telecommunications Act by seeking Commission insinuation into an information provision marketplace. The Commission should decline their invitation both as a matter of law and policy. The Telecommunications Act does not authorize the Commission to increase (if, in fact, such would even be the case) competition in information services markets; nor does sound economic policy support such regulatory intervention in an otherwise sufficiently-competitive market environment.

In accordance with Section 1.1206(b) of the Commission's rules, the original and one copy of this letter and attachment are being filed with your office for each of the above-referenced proceedings for inclusion in the public record of the proceedings. Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is attached for this purpose.

Thank you for the opportunity to submit these comments. Please contact me if you have any questions concerning this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathryn Marie Krause", followed by a stylized flourish or initial.

Kathryn Marie Krause

cc: Yog Varma
Charles L. Keller
Gregory M. Cooke
Robin Smolen
William A. Kehoe, III
Dennis Johnson

EXHIBIT A

U S WEST
1801 California Street, Suite 5200
Denver, CO 80202
303 865-0640 (phone)
303 865-3484 (fax)
email: jls@2@uswest.com

John A. Kelley
President
Wholesale Marketing



October 22, 1999

Mr. Gilbert E. Mank
President & Chief Operating Officer
Excell Agent Services, L.L.C.
2175 West 14th Street
Tampa, AZ 85281

*Response Delivered Via Facsimile as was Original Correspondence
Sent to Facsimile 602-808-5015*

Dear Mr. Mank:

I have been asked to respond to your letter to Sol Trujillo, Chairman, President and Chief Executive Officer of U S WEST, Inc., dated October 6, 1999 as it relates to Directory Assistance (DA) listing. This product offering is handled within my organization, Wholesale Marketing. It is apparent from your letter that you are not happy with U S WEST's current position regarding directory listing availability, specifically in regard to our pricing. This response is intended to address your concerns and provide details to support our pricing levels as proper under the law and responsive to market conditions.

Current DA Listing Offerings

As you may know, U S WEST currently makes our DA listing information available as an unbundled network element (UNE) to Competitive Local Exchange Carriers (CLEC), or independent DA Providers acting on behalf of CLECs, for the operating territory in which the CLEC is authorized to serve. Listings provided under this statutory provision are made available at TELRIC pricing. When purchasing under this scenario, CLECs are permitted to use the DA listing information for its purposes in providing any lawful form of DA to its local exchange end users.

Your reference to the Texas case and SBC's pricing appear to be references to a UNE proceeding involving TELRIC pricing. As a comparison, U S WEST's TELRIC prices vary across our 14 states, but average out at \$0.0073 per listing for the initial load of the database and \$0.0171 per listing for daily listing record updates. Again, this pricing option is only available under the CLEC or independent DA Provider category as previously mentioned. Furthermore, as you know, we have only seen a Press Release regarding the Commission's most recent actions in the UNE Remand Proceeding. It is not clear whether directory listings themselves will be categorized as UNEs in the future.

U S WEST also has an obligation to provide DA listings to providers of telephone exchange services and telephone toll services on a broader basis under the statutory provisions dealing with dialing parity found



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at Section 251(b)(3). When a carrier desires to use the DA listings that it is purchasing either beyond its certified CLEC operating territory, or for toll service, the carrier - or its DA agent - is required to purchase the listings under this latter statutory provision, which is not controlled by TELRIC pricing principles. Under this product offering, listings for both the initial load of the database and for subsequent daily listing activity updates are priced at \$0.025 per listing.

U S WEST also has a third pricing option available for telecommunications carriers who intend to provide DA services to their own end users and the end users of other carriers. This third pricing option allows for further market uses of listing information. Listings for the initial load of the database are priced at \$0.025 per listing; daily listing updates are priced at \$0.05 per listing.

The FCC's National Directory Assistance Order

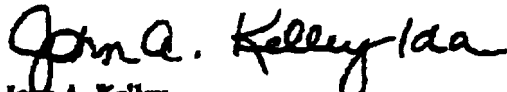
In reply to your citation to the FCC's recent National Directory Assistance Order, U S WEST is of the understanding that this Order does not set any "pricing rules" at all. It simply requires that certain information be provided to others at the same price that U S WEST imputes to itself. U S WEST is in the process of compiling a Cost Allocation Manual (CAM) to be filed with the FCC that will outline how this imputation will occur. We are confident that our proposal will meet the imputation requirements imposed by the FCC.

Access to Accurate, Up-to-Date Listings

U S WEST does not have a full understanding of Excell's issues around access to listing information. U S WEST's practices do not impede Excell's access to accurate, up-to-date listings. We are open to resolving your concerns, and will need additional clarification on the specific areas that need to be addressed.

Your letter references the intent to pursue legal remedies in the event your issues are not resolved. It is U S WEST's intent to resolve concerns in a business environment that facilitate a common understanding. I have asked Jasmin Espy, Vice President-Wholesale Marketing, to contact you personally in establishing a relationship at the "senior management" level in an attempt to avoid any possible litigation. Jasmin Espy can be reached at (303) 896-3237.

Sincerely,


John A. Kelley

cc: Lawrence E. Strickling (FCC), Sol Trujillo (U S WEST), Mark D. Roellig (U S WEST), Jasmin Espy (U S WEST), Don J. Evanoff (Excell)